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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 29 March 1996 from the Minister for Foreign Affairs of Georgia, addressed to the Assistant Secretary-General for Human Rights

I have the honour to transmit herewith a copy of the statement* of the State Commission of Georgia for Investigation of the Policy of Genocide/Ethnic Cleansing against the Georgian Population in Abkhazia, Georgia dated 26 March 1996, entitled "The persons conducting the policy of genocide/ethnic cleansing in Abkhazia, Georgia, must be brought before a Court with international jurisdiction" and containing the main conclusions and recommendations aimed at the eradication and punishment of this crime in the region.

I would be grateful if the present letter and its annex could be circulated as a document of the fifty-second session of the Commission on Human Rights before agenda item 10 is discussed.

(Signed) Irakli MENAGARISHVILI

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* The annexed statement is reproduced as received in the language of submission and English only.

Annex

STATEMENT BY THE STATE COMMISSION OF GEORGIA FOR INVESTIGATION OF THE POLICY OF ETHNIC CLEANSING/GENOCIDE AGAINST THE GEORGIAN POPULATION IN ABKHAZIA, GEORGIA

The persons conducting the policy of genocide/ethnic cleansing in Abkhazia, Georgia, must be brought before a court with international jurisdiction

1. Three and a half years have passed since armed conflict broke out in a region of Georgia, the Abkhaz Autonomous Republic - a conflict forced on the people of Georgia by aggressive separatists, backed by massed foreign military and economic assistance and aided by thousands of mercenaries who have poured into the region in search of gain, with a view to wresting away from Georgia land that has been a part of it since time immemorial.

2. By tearing up, one after another, the cease-fire agreements they themselves have signed, the separatists and mercenaries have managed to seize almost the whole of Abkhazia.

3. The extermination of ethnic Georgians, principally peaceful civilians - political figures, teachers, doctors, writers and cultural workers - has begun. Georgian architectural and archaeological monuments showing that Georgians have lived in the Abkhaz region since ancient times have been destroyed.

4. Under threat of physical reprisals, the survivors have been driven from their birthplaces and out of Abkhazia, which has been declared an "independent State". As a result over 6,000 people have died, most of them peaceful civilians, and some 250,000 Georgians have been forced to flee in order to escape blood-chilling humiliations, torture and shootings.

5. Besides Georgians, over 100,000 non-Georgians have fled Abkhazia - Russians, Armenians, Greeks, Estonians - and even thousands of Abkhaz have left their country, not wishing to be associated with the fascist regime. Thus four fifths of the population of the region is now outside it.

6. Abkhazia is in the process of being settled by mercenaries and others. This must alter the demographic composition of the population. The United Nations Security Council has condemned such criminal actions in its resolution 896 (1994).

7. Thus we have a text-book example of ethnic cleansing/genocide aimed at the majority (before the conflict, Abkhaz made up 17 per cent of the population of the region, Georgians 47 per cent).

8. Efforts by the United Nations have since helped to put a stop to the armed confrontation. The Security Council, the Secretary-General and the President of the Russian Federation have all played major roles.

9. Even after the signing of the Agreement on a Cease-fire and Separation of Forces on 14 May 1994 and the introduction of the peace-keeping forces of the CIS (mostly Russian troops) into the Gali region in the summer of 1994,

however, and despite the presence of a United Nations Observer Mission, the Abkhaz separatists have continued their policy of "sterilizing" Abkhazia of its Georgian population - which was one of their principal objectives in starting the conflict.

10. The leader of the Abkhaz separatists and his entourage have committed crimes against humanity: they it was who created the ideology of aggressive separatism and dispatched illegitimate armed units to murder and torture innocent citizens even after a truce had been agreed.

11. As a rule, the Abkhaz separatists justify their actions by citing either the impossibility of overseeing their armed formations or the need to punish supposed terrorist acts on the part of "Georgian terrorists".

12. It is hard to deny that a few Georgian refugees/displaced persons whose families have fallen victim to the barbaric acts of the separatists and their hirelings do make their way into the Gali region and take revenge, and such action is directed against both the Abkhaz armed units and those who collaborate with them. Such acts are evidently not of the same nature as the "ethnic murders" committed by the "Abkhaz authorities".

13. In such instances too, however, the "Abkhaz authorities" respond by annihilating the innocent peaceful population and their homes and crops just as Hitler's occupying forces did.

14. This is a policy of quite another order.

15. The fact that, even today, the leaders of the separatist regime refuse to comply with the agreements they themselves have signed on the return to their homes of refugees and displaced persons and are maintaining their policy of terror towards those who have dared to return either under the aegis of the Office of the United Nations High Commissioner for Refugees or spontaneously, at their own risk, is proof that the fascist regime hopes to perpetuate the changes in the demographic composition of the population.

16. One need only refer to the report of the Organization for Cooperation and Security in Europe Mission to Georgia and United Nations staff in Tbilisi on the human rights situation in the Gali region of the Republic of Georgia, which clearly states that the Abkhaz authorities continue to apply a policy of violent ethnic cleansing with the aim of preventing any significant repatriation in the Gali region or any other part of Abkhazia. The tactics employed vary from simple verbal intimidation and arrests for short periods to murder and some most horrific atrocities, from all accounts, have been committed on orders from Sukhumi ... (Report on a visit to Western Georgia and the Gali region under Abkhaz control, 19-21 April 1995).

17. The Security Council has repeatedly condemned the Abkhaz separatists for not allowing refugees and displaced persons to return to their homes "deploring the continuing obstruction of such return by the Abkhaz authorities ...". On 12 January 1996, the Council again demanded that "the Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons ... [and] guarantee the safety of spontaneous returnees already in the area ..." (resolution 1036 (1996)).

18. The Abkhaz separatists, though, have been continuing their policy of terror, murder and violent deportation of ethnic Georgians. Despite the presence of peace-keeping forces in the Gali area, over 1,000 peaceful inhabitants have been killed in a year and a half, among them 14 minors, 144 women, 742 men aged over 50 and 24 teachers; over 400 people have been taken away to destinations unknown and have disappeared without trace; 3,400 homes have been burnt, all Georgian schools and preschool institutions have been banned (in an area where 90 per cent of the population used to be Georgian), and returning refugees have been coerced into signing documents recognizing the laws, and the jurisdiction generally, of a separatist regime that has not been recognized by a single State anywhere in the world.

19. The State Commission has made its findings available to the world community - a move facilitated by the United Nations Commission on Human Rights, inasmuch as the first statement by the State Commission was published in document E/CN.4/1994/123 and then, a year later, in document E/CN.4/1995/139, dated 9 February 1995, which contained the State Commission's detailed analysis and conclusions. The United Nations Security Council has also had an opportunity to acquaint itself with facts that expose the Abkhaz separatists' crime against humanity (S/1994/225, dated 26 February 1994; S/1995/200, dated 14 March 1995,.

20. Strikingly, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. A. Eide, emphasized in document E/CN.4/Sub.2/1994/36, dated 6 July 1994, that in Abkhazia "the challenge to the territorial integrity of Georgia has been accompanied by processes of ethnic cleansing" (para. 31).

21. In December 1994 the heads of State and Government of the then Conference on Security and Cooperation in Europe, meeting in Budapest, expressed "deep concern over 'ethnic cleansing', the massive expulsion of people, predominantly Georgian, from their living areas and the deaths of large numbers of innocent civilians" (see S/1994/1435, annex).

22. These conclusions were endorsed by the Security Council in its resolutions 993 (1995) and 1036 (1996).

23. The Minsk Declaration by the Council of Heads of States Members of CIS on 26 May 1995 also refers to this situation (S/1995/459, annex IV).

24. The policy of genocide/ethnic cleansing being pursued by the separatists, coupled with the armed seizure of part of the territory of a sovereign democratic State, reveals the aggressiveness and inhumanity of the regime.

25. The events in Abkhazia are similar to others that have been and are taking place in various hot spots around the globe where political leaders, claiming to be defending the interests of a national, ethnic, religious or linguistic minority, set out, weapons in hand, to dismember a United Nations Member State, making active use of foreign military, economic and other assistance but also committing gross, systematic violations of human rights, notably crimes against humanity in their most abhorrent form - genocide - and one form of genocide in particular - ethnic cleansing.

26. There is thus every justification for defining aggressive separatism as a deliberate attempt to transfer the ownership of land through force or the threat of force on the part of a group of individuals, irrespective of their citizenship and the positions they occupy in the national, political or public life of the State or some part of it; irrespective also of whether the group belongs to the majority population or to the national, ethnic, religious or linguistic minorities living within that State.

27. Such attempts manifest themselves in moves to undermine the territorial integrity and political unity of the State so as to mark out a particular region within it; in propaganda urging separatism and the need for a violent change in the demographic structure of the region, made in public statements in the mass media and by officials speaking ex officio; in the ignition of local conflicts with a view to wresting away a piece of territory; in the enlistment of armed gangs and groups of irregular forces or mercenaries to use armed force on the side of the separatists; in displays of nationalism, chauvinism and fascism; in the pursuit of a policy of genocide, or of ethnic cleansing as one form of genocide, against persons belonging to other national, ethnic, religious or linguistic groups living on land controlled by the separatists; in resistance to the return home of refugees and persons displaced by violence; and in other gross violations of human rights and fundamental freedoms designed to subordinate the population to a regime installed by force of arms.

28. The threat of aggressive separatism causing immeasurable suffering to hundreds of thousands of innocent people has at last been recognized by the States united in CIS.

29. Aggressive separatism was outlawed at the Alma Ata meeting of the Council of Heads of State of CIS (Alma Ata, 10 February 1995).

30. The memorandum on the maintenance of peace and stability in CIS imposed on all member States the obligation to take steps within their respective territories, in conformity with national legislation and international norms, to "put a stop to all manifestations of separatism, nationalism, chauvinism and fascism" (para. 7), and "not to support within other member States separatist movements or separatist regimes, if any should arise, nor to establish political, economic or other ties with them, allow them to make use of the territory or communications of States members of the Commonwealth, or provide them with economic, financial, military or other assistance" (para. 8).

31. The statement on the conflict in Abkhazia, Republic of Georgia, by the Council of Heads of State of CIS (Minsk, 26 May 1995) confirmed this with reference to a specific situation: the conflict in Abkhazia: "Guided by the provisions enunciated in the Alma Ata memorandum of 10 February 1995 on overcoming the threat of separatism, the member States regard unswerving compliance with those provisions by all States in the Commonwealth as crucial to the speediest possible settlement of the conflict" (para. 4).

32. A decision on measures to settle the conflict in Abkhazia, Georgia, passed by the Council of Heads of State of CIS on 19 January 1996 in Moscow,

citing the above documents and reaffirming the obligations on member States deriving therefrom, defined a package of measures to bring pressure to bear on the Abkhaz side.

33. "Deploring the unconstructive position of the Abkhaz side which [was] hindering the attainment of mutually acceptable negotiated agreements on a political settlement to the conflict and the safe and dignified return to their homes of refugees and displaced persons", the CIS member States undertook not to provide the separatist regime with any military assistance and to engage in economic, trade, financial and other operations only with the assent of the Government of Georgia, Abkhazia being "an inalienable part of Georgia" (para. 6).

34. Unfortunately the world community of States has not yet concentrated its attention on this problem, and this has significantly weakened efforts by the United Nations and OCSE to prevent "ethnic conflicts" within the borders of United Nations Member States since the guidelines laid down in the Charter of the United Nations for resolving disputes among sovereign States cannot be applied to separatism. A separatist regime that has taken up arms, grossly violating a country's constitution and the requirements of international law - in particular, international humanitarian law and the resolutions of the United Nations Security Council - cannot be put on the same footing as a sovereign State.

35. It is time to come to grips with this problem both in the United Nations and in OSCE, for the dreadful crime of genocide has not only not been eradicated but has taken on a new form, that of the monstrous practice of ethnic cleansing.

36. The monstrous practice of ethnic cleansing, genocide in its new form, was spawned, however, by aggressive separatism.

37. The concept and substance of this kind of crime have already been defined thanks to the work of the Commission of Experts specially appointed by the Secretary-General of the United Nations under Security Council resolution 780 (1992) to examine and analyse, inter alia, information furnished pursuant to Council resolutions 771 (1992) and 780 (1992) with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia, among them the practice of "ethnic cleansing".

38. The conclusions of the Commission of Experts need repeating: "Ethnic cleansing has been carried out by means of murder, torture, arbitrary arrest and detention, extrajudicial executions, rape and sexual assault ... forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property" (S/1994/674, annex, para. 129).

39. "'Ethnic cleansing' is a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographical areas. To a large extent, it is carried out in the name of misguided,

historic grievances and a powerful driving sense of revenge. This purpose appears to be the occupation of territory to the exclusion of the purged group or groups" (ibid. para. 130).

40. The United Nations General Assembly has recognized ethnic cleansing as one form of genocide (resolution 47/121 of 17 December 1992).

41. It is important to point out that those guilty of genocide/ethnic cleansing fall under international jurisdiction - that of an international court - irrespective of whether national law calls for them to be punished.

42. The Security Council has decided to establish an International Tribunal to prosecute persons responsible for serious violations of international humanitarian law in the former Yugoslavia (resolution 808 (1991), 22 February 1992), which is already in operation and taking decisions.

43. Thus there exists in modern international law the established concept of one of the most savage and gross forms of crime against humanity, "ethnic cleansing"; its legal nature, perpetrators and victims and the kinds of personal responsibility borne by those guilty of this international crime have been defined.

44. The Georgian State Prosecutor's Office has concluded its inquiry into the crimes committed in Abkhazia, categorizing them as genocide under article 65, paragraph 1, of the Georgian Penal Code, which lays down the harshest punishment for this crime against humanity. There are over one hundred volumes of evidence on the monstrous deeds of the Abkhaz separatists.

45. The land where these crimes were committed, however, is still under the control of the separatists, who are now trying to hide the traces of mass shootings and destroy the victims' graves.

46. The State Commission hopes that the United Nations Commission on Human Rights will not pass over these conclusions, given that the Security Council, OSCE and CIS have all stigmatized the Abkhaz separatists' policy of ethnic cleansing.

47. The Georgian State Commission considers it necessary for the Commission on Human Rights to condemn the ethnic cleansing by the separatists in Abkhazia, Georgia, and become a party to the continuing investigation of these crimes against humanity; this will later facilitate the referral of the case to the International Tribunal established in The Hague under United Nations Security Council resolution 808 (1992), whose jurisdiction could be enlarged by decision of the same Council.